
United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MENASHA WOODEN WARE COMPANY, a corporation
PLAINTIFF IN ERROR

vs.

**SOUTHERN OREGON COMPANY, a corporation; COOS
COUNTY; ROBERT R. WATSON, County Clerk of Coos
County; A. JOHNSON, Jr., Sheriff of Coos County, and
T. M. DIMMICK, Treasurer of Coos County, Oregon; and
FLANAGAN & BENNETT BANK, a Corporation**
DEFENDANTS IN ERROR

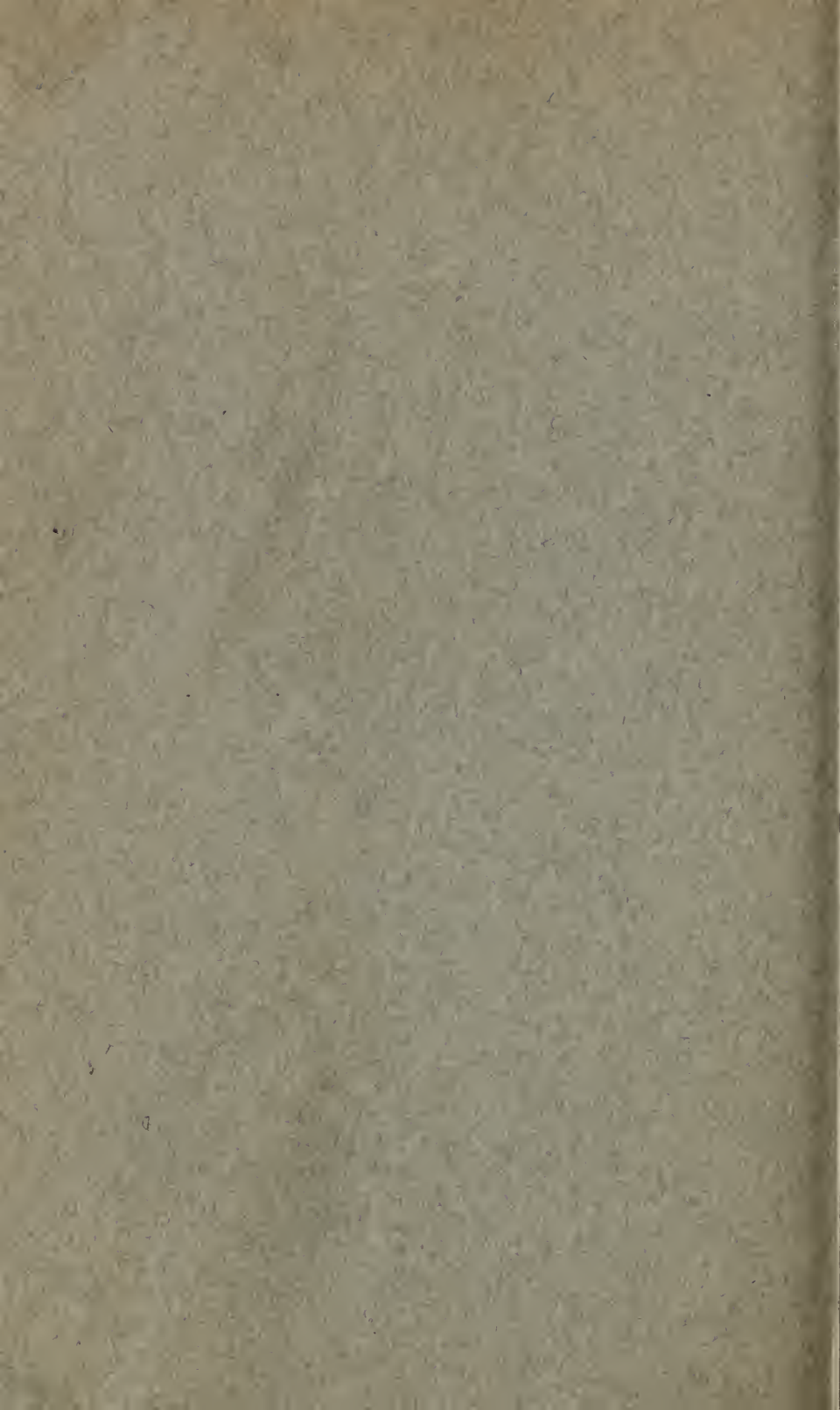
TRANSCRIPT OF RECORD

Upon Writ of Error to the District Court of the United
States, for the District of Oregon

Filed

AUG 28 1916

F. D. Monckton,
Clerk.



United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MENASHA WOODEN WARE COMPANY, a corporation
PLAINTIFF IN ERROR

vs.

**SOUTHERN OREGON COMPANY, a corporation; COOS
COUNTY; ROBERT R. WATSON, County Clerk of Coos
County; A. JOHNSON, Jr., Sheriff of Coos County, and
T. M. DIMMICK, Treasurer of Coos County, Oregon; and
FLANAGAN & BENNETT BANK, a Corporation**
DEFENDANTS IN ERROR

TRANSCRIPT OF RECORD

**Upon Writ of Error to the District Court of the United
States, for the District of Oregon**

INDEX.

	Page
Amended Complaint	5
Assignment of Errors.....	27
Bond on Writ of Error.....	29
Certificate to Transcript.....	32
Citation	1
Demurrer of Coos County and others.....	21
Demurrer of Flanagan & Bennett Bank.....	17
Judgment	25
Motion of Coos County and others to strike out..	19
Order allowing Writ of Error.....	28
Order sustaining Demurrers	25
Petition for Writ of Error.....	25
Writ of Error	2

Menasha Wooden Ware Co.

No.

*United States Circuit Court of Appeals
for the Ninth Circuit.*

MENASHA WOODEN WARE COMPANY, a corporation,
Plaintiff in Error,

vs.

SOUTHERN OREGON COMPANY, a corporation; Coos
County; ROBERT R. WATSON, County Clerk of
Coos County; A. JOHNSON, JR., Sheriff of Coos
County; and T. M. DIMMICK, Treasurer of Coos
County, Oregon, and the FLANAGAN & BENNETT
BANK, a corporation,

Defendants in Error.

NAMES AND ADDRESSES OF THE ATTORNEYS OF RECORD:

Dolph, Mallory, Simon & Gearin,
Mohawk Building, Portland, Oregon,
for the Plaintiff in Error.

Lawrence A. Liljeqvist, Marshfield, Oregon,
for Coos County; Robert R. Watson, County Clerk
of Coos County; A. Johnson, Jr., Sheriff of Coos
County; and T. M. Dimmick, Treasurer of Coos
County, Oregon, Defendants in Error.

Teal, Minor & Winfree, Spalding Building,
Portland, Oregon,
for the Flanagan & Bennett Bank, a corporation,
Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America, District of Oregon, ss.

TO SOUTHERN OREGON COMPANY, A CORPORATION;
COOS COUNTY; ROBERT R. WATSON, COUNTY
CLERK OF COOS COUNTY; A. JOHNSON, JR.,
SHERIFF OF COOS COUNTY; T. M. DIMMICK, TREAS-
URER OF COOS COUNTY, OREGON, AND THE FLANA-
GAN & BENNETT BANK, A CORPORATION, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Menasha Wooden Ware Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this fifth day of July, in the year of our Lord. one thousand, nine hundred and sixteen.

R. S. BEAN,
Judge.

Due service of the foregoing Citation on Writ of Error admitted this 12th day of July, A. D. 1916.

L. A. LILJEQVIST,
District Attorney.

By R. O. GRAVES,
Deputy.

Attorneys for Coos County, Robert R. Watson,
County Clerk, A. Johnson, Jr., Sheriff, and T. M.
Dimmick, County Treasurer of Coos County,
Oregon.

WIRT MINOR,

Attorney for Flanagan & Bennett Bank.

Filed July 14, 1916.

G. H. MARSH,

Clerk.

*In the United States Circuit Court of Appeals
for the Ninth Circuit.*

WRIT OF ERROR.

MENASHA WOODEN WARE COMPANY, a cor-
poration,

Plaintiff in Error,

vs.

SOUTHERN OREGON COMPANY, a corporation;
COOS COUNTY; ROBERT R. WATSON, Coun-
ty Clerk of Coos County; A. JOHNSON, Jr.,
Sheriff of Coos County; T. M. DIMMICK, Treas-
urer of Coos County, Oregon, and the FLANA-
GAN & BENNETT BANK, a corporation,

Defendants in Error.

The United States of America, ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA.

TO THE JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF OREGON,
GREETING:

Because in the records and proceedings, as also

in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between Menasha Wooden Ware Company, a corporation, plaintiff and plaintiff in error, and Southern Oregon Company, a corporation; Coos County, Robert R. Watson, County Clerk of Coos County; A. Johnson, Jr., Sheriff of Coos County; T. M. Dimmick, Treasurer of Coos County, Oregon, and the Flanagan & Bennett Bank, a corporation, defendants and defendants in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the HONORABLE EDWARD DOUGLAS
WHITE, Chief Justice of the Supreme Court
of the United States, this 5th day of July, 1916.

[SEAL]

G. H. MARSH,

Clerk of the District Court of the United
States for the District of Oregon.

By F. L. BUCK,

Deputy.

Service of the above Writ of Error made this
5th day of July, 1916, upon the District Court of
the United States for the District of Oregon, by
filing with me as Clerk of said Court, a duly certi-
fied copy of said Writ of Error.

G. H. MARSH,

Clerk of the District Court of the United
States for the District of Oregon.

By F. L. BUCK,

Deputy.

Filed July 5, 1916.

G. H. MARSH,

Clerk, United States District Court,
District of Oregon.

*In the District Court of the United States for the
District of Oregon.*

November Term, 1915.

Be it remembered, That on the 27th day of Jan-
uary, 1916, there was duly filed in the District
Court of the United States for the District of
Oregon, a complaint, and thereafter there was
duly filed in said Court demurrers to the said

Complaint, and thereafter, after a hearing duly had, the Court on March 20, 1916, sustained the said demurrers, and thereafter, on April 17, 1916, there was duly filed in said Court an Amended Complaint, in words and figures as follows, to wit:

AMENDED COMPLAINT.

*In the District Court of the United States for the
District of Oregon.*

MENASHA WOODEN WARE COMPANY, a corporation,

Plaintiff,

vs.

SOUTHERN OREGON COMPANY, a corporation;
COOS COUNTY; ROBERT R. WATSON, County Clerk of Coos County; A. JOHNSON, Jr., Sheriff of Coos County, and T. M. DIMMICK, Treasurer of Coos County, Oregon, and the FLANAGAN & BENNETT BANK, a corporation,

Defendants.

Plaintiff complaining of defendants, by this its Amended and Supplemental Complaint by leave of Court filed, for cause of action alleges:

I.

That the plaintiff is and during all the times herein mentioned has been, a corporation duly organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin, and qualified to do business in the State of Oregon.

II.

That the defendant Southern Oregon Company is and during all the times herein mentioned has been, a corporation, organized and existing under and by virtue of the laws of the State of Oregon, and is a citizen and resident of the said State.

III.

That the defendant Coos County is a political division of the State of Oregon, is a body politic and corporate, and one of the counties of the State of Oregon; that the defendant Robert R. Watson is the County Clerk and defendant T. M. Dimmick is the County Treasurer of said Coos County, Oregon. That during the year 1912 one W. W. Gage was, and the defendant A. Johnson, Jr., now is, the Sheriff and Tax Collector of said Coos County, Oregon, and all of said defendants are and during all the times herein mentioned have been citizens and residents of the State of Oregon.

IV.

That the defendant Flanagan & Bennett Bank is a banking corporation, duly organized and existing under and by virtue of the laws of the State of Oregon, and is a citizen and resident of the State of Oregon.

V.

That the amount involved in this suit, exclusive of costs, exceeds the sum of \$3000.00.

VI.

That on the 2nd day of July, 1912, the defendant Southern Oregon Company claiming to own cer-

tain lands in Coos County, Oregon, filed its certain Bill of Complaint in the Circuit Court of the State of Oregon for Coos County, against W. W. Gage as Sheriff and Tax Collector of the said Coos County, Oregon, in and by which Bill of Complaint the said Southern Oregon Company alleged that the said W. W. Gage as Sheriff and Tax Collector of Coos County was about to advertise and sell said lands for delinquent taxes.

And in and by said Bill of Complaint it was further alleged that on the 3rd day of March, 1869, the Congress of the United States passed an Act granting to the State of Oregon said lands to aid in the construction of a wagon road from the navigable waters of Coos Bay to Roseburg in the State of Oregon. That on October 22nd, 1870, the Legislative Assembly of the State of Oregon transferred said grant and the lands included therein to the Coos Bay Wagon Road Company. That the Southern Oregon Company was the successor in interest of the Coos Bay Wagon Road Company and succeeded to the title of said company in said lands.

And it was further alleged in said Complaint that the said Southern Oregon Company was in possession of and claimed to own all said lands in Coos County, which lands were particularly described in said Bill of Complaint and that the title to all said lands appeared of record to be in said Southern Oregon Company.

And it was further alleged in said Complaint that the United States of America had brought

suit, which suit was then pending, against the said Southern Oregon Company, to forfeit the title to all said lands and revest the same in the Government. And it was further alleged in said Complaint that all of said lands appeared on the tax rolls of Coos County, Oregon, for the years 1909, 1910, 1911 and 1912 assessed to said Southern Oregon Company and the taxes for said years had not been paid and were delinquent, and that because of said suit the said Southern Oregon Company could not safely pay said taxes.

And it was further alleged in said Bill that by virtue of the provisions of Sections 3693 and 3694, Lord's Oregon Laws, the said W. W. Gage, as Sheriff and Tax Collector of Coos County, Oregon, was about to advertise all said lands for sale for delinquent taxes and was about to issue tax delinquency certificates against all said property which certificates might be foreclosed as provided by Section 3695, Lord's Oregon Laws, and such title as said Southern Oregon Company had in said property would be sold; and said Southern Oregon Company had no plain, speedy or adequate remedy at law in the premises.

VII.

That due service of Summons and Complaint was had in said suit upon the defendant and appearance was duly entered by said defendant.

That on the 3rd day of July, 1912, the said Circuit Court of the State of Oregon for Coos County, then having jurisdiction over the parties and the

subject matter of said suit and all parties in said suit being before the Court, duly made and entered an Order restraining the defendant W. W. Gage as prayed for in said suit, which Order was and is in words as follows, to wit:

“This matter now coming on to be heard, the Court having read the Complaint herein and being fully advised in the premises and the Court being satisfied that this is a proper case for the issuance of a temporary order of injunction,

It is hereby ordered that upon the payment to the Clerk of this Court by the plaintiff, the amount of money shown by the tax rolls of Coos County, Oregon, to be due from the plaintiff as taxes upon the lands assessed to the plaintiff as owners, the defendant W. W. Gage as Tax Collector for said county shall also deliver to the Clerk of this Court proper tax receipts for such taxes, and the said Clerk shall hold and retain said money and tax receipts until the final determination of the case of the United States of America v. Southern Oregon Company now pending in the Circuit Court of the United States for the District of Oregon, Ninth Judicial Circuit, in whatever court said case may be finally determined; and upon such final determination if the real estate described in the Complaint shall be held to be the property of the United States then said money so deposited to the Clerk shall be returned to the

plaintiff, but if it be therein decided that said real estate does not belong to the United States then said money shall be paid over by the Court to the defendant herein; unless it shall meanwhile otherwise be ordered by this Court.

It is further ordered that the defendant W. W. Gage, as Sheriff and Tax Collector of said county, do hereafter refrain from advertising any of said land or any part thereof for sale for the payment of delinquent taxes, and that he do refrain from issuing any tax delinquency certificates against any of said land until the further order of this Court or a Judge thereof."

VIII.

That the defendant W. W. Gage filed a demurrer to said Bill of Complaint, and on the 3rd day of July, 1914, the Court sustained said demurrer and made and entered the following Order, to wit:

"Comes now to be heard the demurrer of the defendant to the complaint and demurrer of defendant to the supplemental complaint and the plaintiff appearing by A. S. Hammond, one of its attorneys, and the defendant appearing by L. A. Liljeqvist, District Attorney, his attorney, and the Court having considered said demurrer and each of them, and being advised in the premises,

It is considered, ordered and adjudged that said demurrers and each of them be sustained.

And the plaintiff stating in open Court that

it would stand upon its Complaint and Supplemental Complaint and did not desire to amend or plead further,

It is considered, ordered, adjudged and decreed that plaintiff's suit be and the same is hereby dismissed and all restraining orders heretofore entered be and the same are hereby vacated and the temporary injunction issued herein is hereby set aside and said orders revoked, and it is further decreed that defendant have and recover his costs and disbursements issued herein and that execution issue therefor."

IX.

That the Southern Oregon Company duly appealed from the said judgment of the Circuit Court of the State of Oregon for Coos County, to the Supreme Court of the State of Oregon, and said Supreme Court on the 13th day of April, 1915, affirmed said judgment of the Circuit Court of the State of Oregon for said Coos County, and directed its mandate to be sent to the Circuit Court of the State of Oregon for Coos County. That thereupon the mandate of the Supreme Court of the State of Oregon in said case was sent to the Circuit Court of the State of Oregon for Coos County and was duly entered of record in said Court on the 22nd day of May, A. D. 1915.

X.

This plaintiff further alleges that on the 30th day of November, 1915, the defendant A. Johnson, Jr., as Sheriff and Tax Collector of Coos County,

Oregon, issued to Coos County Certificates of Delinquency for the delinquent taxes for 1909 on all said property except six small pieces upon which certificates were issued to private parties in accordance with the provisions of Section 3698, Lord's Oregon Laws, and the said defendant Coos County on the 29th day of March, 1916, filed its Complaint in the Circuit Court of the State of Oregon for Coos County against the defendant Southern Oregon Company to foreclose all said Certificates of Delinquency and to sell all said lands to satisfy the same, which suit is now pending.

XI.

And this plaintiff further alleges that on March 15th, 1913, the said defendant Southern Oregon Company in compliance with the terms of said Order of Court drew its check payable to the order of James Watson, who was then County Clerk, for the sum of \$24,752.62, which check was duly certified by said Flanagan & Bennett Bank and delivered to the said James Watson, then County Clerk. That said James Watson, who was then County Clerk, on July 5th, 1913, without having any authority so to do, endorsed said check for payment to T. M. Dimmick, County Treasurer; that thereupon on said July 5th, 1913, said T. M. Dimmick, County Treasurer, presented said check for payment to the defendant Flanagan & Bennett Bank and the same was duly paid.

That this plaintiff is informed, however, and believes that the defendant Flanagan & Bennett Bank has, but without any authority from this

plaintiff or said Southern Oregon Company, or at all, so to do, credited said sum of \$24,752.62 on its books to the defendant T. M. Dimmick on his account with said bank as County Treasurer, and defendant T. M. Dimmick claims to have some interest in said sum of \$24,752.62.

And this plaintiff alleges that said sum of \$24,752.62 and the whole thereof, has remained intact in the possession of said Flanagan & Bennett Bank since March 15th, 1913, and that said Flanagan & Bennett Bank received the same as above set out to the use and benefit of the Southern Oregon Company, defendant, and this plaintiff as Assignee of said Southern Oregon Company, as hereinbefore set out, and that said claim of defendant T. M. Dimmick to have any interest in said money is entirely unfounded.

XII.

And this plaintiff further alleges that on the 31st day of March, 1914, this plaintiff advanced and furnished to the defendant Southern Oregon Company to be used by said Southern Oregon Company in complying with the terms of said Order of Court and for no other purpose, the sum of \$35,000.00, which money was deposited by this plaintiff to the credit of the said Southern Oregon Company in the Flanagan & Bennett Bank, defendant above named.

That on said 31st day of March, 1914, said defendant Southern Oregon Company had to its credit in said Flanagan & Bennett Bank the sum

of \$3,863.26 in addition to said sum of \$35,000.00 so deposited as above set out.

That on said 31st day of March, 1914, the defendant Southern Oregon Company in order to comply on its part with the terms of said Order of Court, drew its check on defendant Flanagan & Bennett Bank in favor of James Watson, who was then County Clerk, for said sum of \$38,863.26; that said James Watson, who was then County Clerk, without having any authority so to do, endorsed and delivered said check to T. M. Dimmick, County Treasurer, and said T. M. Dimmick, County Treasurer, endorsed said check to the defendant Flanagan & Bennett Bank, who paid the same.

That plaintiff is informed, however, and believes that the defendant Flanagan & Bennett Bank has, without any authority from this plaintiff or said Southern Oregon Company, or at all, so to do, credited said sum of \$38,863.26 on its books to the defendant T. M. Dimmick on his account with said bank as County Treasurer, and said T. M. Dimmick claims to have some interest in said sum of \$38,863.26.

And this plaintiff alleges that said sum of \$38,863.26 and the whole thereof has remained intact in the possession of said Flanagan & Bennett Bank since March 31st, 1914, and that said Flanagan & Bennett Bank received the same as above set out to the use and benefit of the Southern Oregon Company, defendant, and this plaintiff, as Assignee of

said Southern Oregon Company as hereinabove set out as to said \$3,863.26 and directly for the use and benefit of this plaintiff as to said \$35,000.00 above set out, and that said claim of the defendant T. M. Dimmick to have any interest in said money is entirely unfounded.

XIII.

And this plaintiff further alleges that neither the said W. W. Gage, as Tax Collector of said Coos County, Oregon, nor said A. Johnson, Jr., as Tax Collector of said Coos County, Oregon, ever delivered to the Clerk of said Coos County, Oregon, proper, or any, tax receipt or receipts, for such or any taxes referred to in the Complaint in said suit of the Southern Oregon Company vs. W. W. Gage, as above set out.

XIV.

And this plaintiff further alleges that long prior to the 10th day of November, 1915, the defendant Southern Oregon Company duly assigned to this plaintiff whatever interest it might be said to have in said sums of money, or any of them, and duly authorized this plaintiff to apply to said defendant Flanagan & Bennett Bank, or to any person having possession of said moneys, or any of them, and to demand the return of the same and repayment thereof to this plaintiff. And this plaintiff says that on or about the 10th day of November, 1915, this plaintiff duly notified said Flanagan & Bennett Bank and said Robert R. Watson, County Clerk,

and said T. M. Dimmick, County Treasurer, of said assignment and authorization, and both this plaintiff and the defendant Southern Oregon Company duly notified said Flanagan & Bennett Bank and said Robert R. Watson and said T. M. Dimmick of all the facts herein pleaded. That on or about the 10th day of November, 1915, after having given said notice to said Flanagan & Bennett Bank and said Robert R. Watson and said T. M. Dimmick of all the facts herein pleaded, this plaintiff and the defendant Southern Oregon Company demanded of said Flanagan & Bennett Bank and said Robert R. Watson and said T. M. Dimmick the return to this plaintiff of all said moneys. And plaintiff alleges that said Flanagan & Bennett Bank and said Robert R. Watson and said T. M. Dimmick refused and still refuse to deliver to this plaintiff said sum of \$38,863.26, or said sum of \$24,752.62, or any part of either of said sums, and that the whole thereof remains due and payable to this plaintiff from said Flanagan & Bennett Bank.

Wherefore, plaintiff prays judgment against said Flanagan & Bennett Bank, Robert R. Watson and T. M. Dimmick for said sum of \$24,752.62 and said sum of \$38,863.26, in all the sum of \$63,615.88. and interest thereon at the rate of six per cent per annum from the 10th day of November, 1915, and for the costs and disbursements of this action.

DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Plaintiff.

STATE OF OREGON, }
County of Coos. } ss.

I, Herbert Armstrong, being first duly sworn, depose and say that I am the agent of the plaintiff in the above entitled suit; and that the foregoing amended and supplemental complaint is true as I verily believe.

HERBERT ARMSTRONG.

Subscribed and sworn to before me this 15th day of April, A. D. 1916.

[SEAL]

JNO. H. GREVES,

Notary Public for the State of Oregon.

And afterwards, to wit, on the 19th day of April, 1916, there was duly filed in said Court and cause, a Demurrer of the defendant Flanagan & Bennett Bank to the Amended Complaint, in words and figures as follows, to wit:

DEMURRER OF FLANAGAN & BENNETT
BANK.

Comes now the defendant Flanagan & Bennett Bank, a corporation, and appearing herein for itself only and for not its co-defendants, demurs to the amended and supplemental complaint and to the whole thereof upon the ground and for the reasons following, that is to say:

I.

It appears from the face of said complaint that this Court has no jurisdiction of the subject-matter of this action.

II.

It appears from the face of said complaint that the subject-matter of this action is now involved in a certain suit pending in the Circuit Court of the State of Oregon for Coos County, wherein Southern Oregon Company, alleged by the complaint to be the assignor of the plaintiff, is plaintiff and one W. W. Gage, Sheriff and Tax Collector of Coos County, Oregon, and predecessor in office of the defendant A. Johnson, Jr., is defendant.

III.

It appears from the face of said complaint that there is a defect of parties defendant in this, that it appears from the face of the complaint that the sums of money sought to be recovered are not held by or claimed by the defendant Robert R. Watson or by the Southern Oregon Company or by A. Johnson, Jr., or by the County Clerk of Coos County, or by the Sheriff of Coos County, Oregon, but are claimed by and the legal title thereto is vested in the defendant T. M. Dimmick as Treasurer of Coos County, Oregon, and that this defendant has no interest in the same and did not at any time take or receive the same from the plaintiff or his assignor or for the use of the plaintiff or his assignor.

IV.

It appears from the face of said complaint that the complaint does not state facts sufficient to constitute a cause of action and that if the plaintiff has any remedy such remedy is in equity and not at law.

V.

It appears from the face of said complaint that the sums of money, the subject-matter of this action, were deposited in the Circuit Court of the State of Oregon for Coos County to be retained in said Court until the final determination of the case of United States of America against the Southern Oregon Company, formerly pending and heretofore determined by this Court and now pending on appeal in the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit, and that no final determination of said case has been had or made.

TEAL, MINOR & WINFREE,

Attorneys for Defendant,

Flanagan & Benniett Bank.

I do hereby certify that I am an attorney of this Court; that I have read the foregoing demurrer and that in my opinion the same is well founded in law and that the same is not filed for delay.

WIRT MINOR.

Filed April 19, 1916.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 24th day of April, 1916, there was duly filed in said Court and cause, a Motion of Coos County and others to strike out the Amended Complaint, in words and figures as follows, to wit:

MOTION OF COOS COUNTY TO STRIKE OUT.

Now comes Coos County, Robert R. Watson,

County Clerk of Coos County, A. Johnson, Jr., Sheriff of Coos County, and T. M. Dimmick, Treasurer of Coos County, appearing for themselves alone and not for their co-defendants jointly and severally, move to strike from plaintiff's Amended and Supplemental Complaint all of subdivision numbered ten therein for the reason that the same is sham, frivolous, and irrelevant.

These defendants further jointly and severally move the Court for an order striking from the files in the above entitled action the Amended and Supplemental Complaint of the plaintiff herein for the reason that the same is sham, frivolous, and irrelevant in that it is substantially a repetition of plaintiff's original complaint filed herein, which said complaint was demurred to by these defendants for the reason that the Court had no jurisdiction of the subject matter of the action, among other causes, and this Court heretofore sustained this defendant's said demurrer on the ground that the Court had no jurisdiction of the subject matter of said action.

LAWRENCE A. LILJEQVIST,
Attorney for Defendants above named.

Filed April 24, 1916.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 24th day of April, 1916, there was duly filed in said Court and cause, a Demurrer of Coos County and others

to the Amended Complaint, in words and figures as follows, to wit :

DEMURRER OF COOS COUNTY AND OTHERS.

Comes now the defendants Coos County, Robert R. Watson, County Clerk of Coos County, A. Johnson, Jr., Sheriff of Coos County, Oregon, and T. M. Dimmick, Treasurer of Coos County, Oregon, and appearing for themselves and not for their co-defendants, jointly and severally demur to the Amended and Supplemental Complaint, and to the whole thereof upon the ground and for the reasons following, that is to say :

I.

It appears from the face of the Amended and Supplemental Complaint that this Court has no jurisdiction of the subject matter of this action.

II.

It appears from the face of the Amended and Supplemental Complaint that the subject matter of this action is now involved in a certain suit pending in the Circuit Court of the State of Oregon for Coos County, Oregon, wherein Southern Oregon Company, alleged by the Amended and Supplemental Complaint to be the assignor of the plaintiff, is plaintiff; and wherein W. W. Gage, Sheriff and Tax Collector of Coos County, Oregon, and predecessor in office of the defendant A. Johnson, Jr., is defendant.

III.

It appears from the face of the Amended and Supplemental Complaint that the Amended and Supplemental Complaint does not state facts sufficient to constitute a cause of action, and that if the plaintiff has any remedy it is by intervention in the Circuit Court of Coos County, State of Oregon, in the case of Southern Oregon Company, plaintiff, vs. W. W. Gage, Sheriff and Tax Collector, and filing a petition in said cause in the Circuit Court of Coos County, Oregon, praying for and requesting an order directing the payment of the fund paid into said Court and to said County Clerk as alleged in the Amended and Supplemental Complaint and for a distribution of the fund to the person or persons or corporate body entitled thereto.

IV.

It appears from the face of the Amended and Supplemental Complaint that the sums of money the subject matter of this action were deposited in the Circuit Court of the State of Oregon for Coos County, to be retained in said Circuit Court until the final determination of the case of United States of America against the Southern Oregon Company, formerly pending and heretofore determined by this Court, and now pending on appeal in the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit, and that no final determination of said case has been had or made.

V.

That it appears from the face of the Amended and Supplemental Complaint that the moneys therein mentioned are legally due and owing from the Southern Oregon Company as taxes on lands owned by said Southern Oregon Company in Coos County, Oregon; and that said moneys and the whole thereof belong to the defendant Coos County, Oregon, and its officers charged by law with the custody and keeping of tax moneys are entitled to keep and retain the same, and that said defendant Coos County, Oregon, and these demurring defendants are entitled to apply them upon delinquent taxes of said Southern Oregon Company.

VI.

That it appears from the face of the Amended and Supplemental Complaint that the sums of money sought to be recovered, and mentioned in the Amended and Supplemental Complaint are held by or claimed by the defendant T. M. Dimmick, as County Treasurer of Coos County, Oregon, as the moneys of said Coos County; and that Coos County, Robert R. Watson, County Clerk of Coos County, A. Johnson, Jr., Sheriff of Coos County, and T. M. Dimmick, did not nor did their predecessors in office, title or interest at any time take or receive the same from the plaintiff or its assignor for the use of the plaintiff or its assignor.

VII.

It appears from the face of the Amended and Supplemental Complaint that there is a defect of

parties defendant in this, that the Circuit Court of the State of Oregon in and for the County of Coos is not a defendant herein, nor are any of the Judges thereof, to wit, either the Hon. John S. Coke, J. W. Hamilton, or G. F. Skipworth parties defendant herein, and it appears that the money and funds mentioned in said Amended and Supplemental Complaint is now in *custodia legis* and has been deposited with T. M. Dimmick, the County Treasurer herein, pursuant to the order of said Circuit Court.

LAWRENCE A. LILJEQVIST,

Attorney for Defendants Coos County,
Robert R. Watson, County Clerk of Coos
County, A. Johnson, Jr., Sheriff of Coos
County, Oregon, and T. M. Dimmick,
Treasurer of Coos County, Oregon.

I hereby certify that I am an attorney of this Court; that I have read the foregoing demurrer, and that in my opinion the same is well founded in law, and that the same is not filed for delay.

LAWRENCE A. LILJEQVIST.

Filed April 24, 1916.

G. H. MARSH,
Clerk.

And afterwards, to wit, on Monday, the 15th day of May, 1916, the same being the 61st Judicial day of the regular March, 1916, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER SUSTAINING DEMURRERS:
JUDGMENT.

Now, at this day, come the plaintiff by Mr. John M. Gearin, of counsel, whereupon this cause comes on to be heard by the Court upon the motion of the defendants to strike out parts of the amended complaint herein, said defendants not appearing; on consideration whereof, it is ordered and adjudged that said motion be, and the same is hereby denied, and thereupon this cause comes on to be heard upon the several demurrers to said amended complaint; on consideration whereof, it is ordered and adjudged that said demurrers be, and the same are hereby sustained and that the amended complaint herein be, and the same is hereby dismissed, and that said defendants have and recover of and from said plaintiff their costs and disbursements taxed herein at \$.....

And afterwards, to wit, on the 5th day of July, 1916, there was duly filed in said Court and cause, a Petition for Writ of Error, in words and figures as follows, to wit:

PETITION FOR WRIT OF ERROR.

Now comes the Menasha Wooden Ware Company, a corporation, plaintiff herein, and says that on or about the 15th day of May, 1916, this Court entered judgment herein in favor of the defendants and against this plaintiff, sustaining the demurrers to this plaintiff's Amended Complaint and dismiss-

ing plaintiff's Amended Complaint and directing judgment for the defendants for their costs and disbursements, in which judgment and the proceedings had prior thereunto certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition;

Wherefore, this plaintiff prays that a Writ of Error may issue in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of error so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals. And plaintiff, petitioner herein, prays that the judgment rendered in this cause as above described may be reversed, held for naught and that said cause be remanded for further proceedings.

MENASHA WOODEN WARE COMPANY,

Petitioner.

DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Petitioner.

Filed July 5, 1916.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 5th day of July, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS.

The plaintiff in this action in connection with its Petition for a Writ of Error, makes the following Assignment of Errors, which it avers occurred upon the trial of the cause, to wit:

First. The District Court of the United States for the District of Oregon erred in sustaining the demurrer of the defendants Coos County; Robert R. Watson, Clerk of Coos County; A. Johnson, Jr., Sheriff of Coos County, and T. M. Dimmick, Treasurer of Coos County, Oregon, to plaintiff's Amended Complaint.

Second. The said Court erred in sustaining the demurrer of the defendant Flanagan & Bennett Bank, to plaintiff's Amended Complaint.

Third. The said Court erred in not overruling the demurrer of the defendants Coos County; Robert R. Watson, Clerk of Coos County; A. Johnson, Jr., Sheriff of Coos County, and T. M. Dimmick, Treasurer of Coos County, Oregon, to plaintiff's Amended Complaint.

Fourth. The said Court erred in not overruling the demurrer of defendant Flanagan & Bennett Bank to plaintiff's Amended Complaint.

Fifth. The said Court erred in dismissing plaintiff's Amended Complaint.

Sixth. The said Court erred in awarding and entering judgment in favor of the defendants and against this plaintiff for costs and disbursements.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Plaintiff.

Filed July 5, 1916.

G. H. MARSH,
Clerk.

And afterwards, to wit, on Wednesday, the 5th day of July, 1916, the same being the 2nd Judicial day of the regular July, 1916, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER ALLOWING WRIT OF ERROR.

On this 5th day of July, 1916, came the plaintiff, by its attorneys, and filed herein and presented to the Court, its Petition praying for the allowance of a Writ of Error intended to be urged by it and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the Writ of Error upon the plaintiff giving bond according to law, in the sum of Two Hundred and

Fifty Dollars, which shall operate as a supersedeas bond.

R. S. BEAN,
Judge.

Filed July 5, 1916.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 5th day of July, 1916, there was duly filed in said Court and cause, a Bond on Writ of Error, in words and figures as follows, to wit:

BOND ON WRIT OF ERROR.

Know All Men by These Presents, That the Menasha Wooden Ware Company, a corporation, as principal, and Maryland Casualty Company, a corporation organized under the laws of the State of Baltimore, and authorized to do business in the State of Oregon, as surety, are held and firmly bound unto the said defendants above named, in the full and just sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to the said defendants, their attorneys, successors and assigns; to which payment well and truly to be made, we bind ourselves and our and each of our, successors and assigns, jointly and severally by these presents. Sealed with our seals and dated this 5th day of July, A. D. 1916; and,

Whereas, lately at a District Court of the United States for the District of Oregon, in a suit pending in said Court between the said plaintiff, and the defendants above named, a judgment was rendered

against the said plaintiff, and the said plaintiff having obtained a Writ of Error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the defendants above named citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, on the..... day of.....next.

Now, the condition of the above obligation is such, that if the said plaintiff shall prosecute said Write of Error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

MENASHA WOODEN WARE COMPANY,
By DOLPH, MALLORY, SIMON & GEARIN.

JNO. M. GEARIN,
Attorney.

[Seal, Maryland Casualty Company.]

MARYLAND CASUALTY COMPANY,

By GEE. S. RODGERS,
Its Attorney.

By J. F. GANNON,
Its Attorney.

Examined and approved this 5th day of July,
1916.

R. S. BEAN,
Judge.

Filed July 5, 1916.

G. H. MARSH,
Clerk.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing Writ of Error, and in obedience thereto, do hereby certify that the foregoing printed transcript of record in the case in which Menasha Wooden Ware Company is plaintiff, and plaintiff in error, and the Southern Oregon Company, Flanagan & Bennett Bank, and others are defendants, and defendants in error, has been prepared by me in accordance with the law and the rules of Court, and in accordance with the direction of the praecipe for transcript filed in said cause by said plaintiff in error, and that the said transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause designated by the said praecipe to be included herein, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is \$ for printing said record, and that the same has been paid by said plaintiff in error.

In testimony hereof I have hereunto set my hand
and affixed the seal of said
Court at Portland in said
district this day
of August, 1916.

Clerk.